

2019 Current Fiscal Year Report: Assembly of the Administrative Conference of the United States

Report Run Date: 06/04/2019 09:50:37 PM

1. Department or Agency

Administrative Conference of the United States

2. Fiscal Year

2019

3. Committee or Subcommittee

Assembly of the Administrative Conference of the United States

3b. GSA Committee No.

73677

4. Is this New During Fiscal Year?

No

5. Current Charter

08/03/2018

6. Expected Renewal Date

08/03/2020

7. Expected Term Date

8a. Was Terminated During Fiscal Year?

No

8b. Specific Termination Authority

8c. Actual Term Date

9. Agency Recommendation for Next Fiscal Year

Continue

10a. Legislation Req to Terminate?

Not Applicable

10b. Legislation Pending?

Not Applicable

11. Establishment Authority Statutory (Congress Created)

12. Specific Establishment Authority

5 U.S.C. 591-596

13. Effective Date

07/30/2008

14. Committee Type

Continuing

14c. Presidential?

No

15. Description of Committee Other Committee

16a. Total Number of Reports

No Reports for this Fiscal Year

17a. Open Meetings and Dates 0 17b. Closed Meetings and Dates 0 17c. Partially Closed Meetings and Dates 0 Other Activities 0 17d. Total Meetings and Dates 0

No Meetings

Current FY Next FY

18a(1). Personnel Pmts to Non-Federal Members

\$0.00 \$0.00

18a(2). Personnel Pmts to Federal Members

\$0.00 \$0.00

18a(3). Personnel Pmts to Federal Staff

\$0.00 \$0.00

18a(4). Personnel Pmts to Non-Member Consultants

\$0.00 \$0.00

18b(1). Travel and Per Diem to Non-Federal Members

\$0.00 \$0.00

18b(2). Travel and Per Diem to Federal Members

\$0.00 \$0.00

18b(3). Travel and Per Diem to Federal Staff

\$0.00 \$0.00

18b(4). Travel and Per Diem to Non-member Consultants

\$0.00 \$0.00

| | | |
|---|--------|--------|
| 18c. Other(rents,user charges, graphics, printing, mail, etc.) | \$0.00 | \$0.00 |
| 18d. Total | \$0.00 | \$0.00 |
| 19. Federal Staff Support Years (FTE) | 0.00 | 0.00 |

20a. How does the Committee accomplish its purpose?

The statutory purposes of the Administrative Conference are to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest (5 USC 591). The Act further specifies the objectives of promoting more effective public participation and efficiency in the rulemaking process; reducing unnecessary litigation in the regulatory process; improving the use of science in the regulatory process; and improving the effectiveness of laws applicable to the regulatory process. The Assembly consists of the 101 Conference members, constituted as specified in the Administrative Conference Act, meeting in plenary session to discuss and adopt recommendations for improving administrative procedures. Plenary sessions are normally scheduled twice each year, to consider draft recommendations proposed by subcommittees.

20b. How does the Committee balance its membership?

The Administrative Conference Act specifies the composition of the membership (5 USC 593). The Act provides for a Chairman appointed by the President with Senate confirmation; 10 additional Council members appointed by the President, with the number of government members not to exceed the number of private sector members; members from independent regulatory agencies and from Executive Branch agencies designated by the President; plus not more than 40 members from outside the Federal government, appointed by the Chairman with the approval of the Council. The non-government members include practicing attorneys, scholars in administrative law or government, or others possessing knowledge and experience with respect to Federal administrative procedure. The total membership may not exceed 101.

20c. How frequent and relevant are the Committee Meetings?

The entire Assembly ordinarily meets twice each year. The number of subcommittee meetings is variable, depending on workload. It is anticipated that each of five subcommittees will meet an average of four times per year, for an estimated total of 20 subcommittee meetings.

20d. Why can't the advice or information this committee provides be obtained

elsewhere?

No other Federal entity exists for the purpose of bringing together the public and private sectors on a non-partisan basis, to focus on improving administrative procedures in Federal agencies and the courts, as provided in the Administrative Conference Act (5 USC 591-596).

20e. Why is it necessary to close and/or partially closed committee meetings?

N/A. All meetings of the Assembly are open.

21. Remarks

Designated Federal Officer

Shawne McGibbon General Counsel

| Committee Members | Start | End | Occupation | Member Designation |
|---------------------|------------|------------|--|--|
| Apol, David | 03/30/2015 | 09/30/2019 | General Counsel, Office of Government Ethics | Regular Government Employee (RGE) Member |
| Baker, Gregory | 03/23/2016 | 09/30/2019 | Deputy General Counsel, Federal Election Commission | Regular Government Employee (RGE) Member |
| Beerrmann, Jack | 07/20/2017 | 06/30/2019 | Professor of Law, Boston University School of Law | Special Government Employee (SGE) Member |
| Benderson, Eric | 11/27/2012 | 09/30/2019 | Assistant General Counsel for Litigation and Claims, Small Business Administration | Regular Government Employee (RGE) Member |
| Bershteyn, Boris | 07/11/2013 | 06/30/2019 | Partner, Skadden, Arps, Slate, Meagher & Flom LLP | Special Government Employee (SGE) Member |
| Bremer, Emily | 07/20/2017 | 06/30/2019 | Associate Professor of Law, University of Notre Dame Law School | Special Government Employee (SGE) Member |
| Bullard, Paige | 05/16/2016 | 09/30/2019 | Managing Attorney, Federal Energy Regulatory Commission | Regular Government Employee (RGE) Member |
| Callanan, Brian | 05/08/2017 | 09/30/2019 | Deputy General Counsel | Regular Government Employee (RGE) Member |
| Cass, Ronald | 07/08/2010 | 10/02/2019 | President, Cass & Associates, PC | Special Government Employee (SGE) Member |
| Cedarbaum, Jonathan | 07/20/2017 | 06/30/2019 | Partner, WilmerHale | Special Government Employee (SGE) Member |
| Coglianese, Cary | 08/01/2016 | 06/30/2020 | Edward B. Shils Professor of Law & Professor of Political Science | Special Government Employee (SGE) Member |

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|--------------------------|------------|------------|---|--|
| Cohen, Daniel | 03/01/2012 | 09/30/2019 | Assistant General Counsel for Legislation, Regulation & Energy Efficiency, Department of Energy | Regular Government Employee (RGE) Member |
| Constantine, Peter | 09/06/2018 | 09/30/2019 | Associate Solicitor, OLC, Dept. of Labor | Regular Government Employee (RGE) Member |
| Cooper, Anika | 01/26/2015 | 09/30/2019 | Attorney, Office of General Counsel, Surface Transportation Board | Regular Government Employee (RGE) Member |
| Croley, Steven | 07/20/2017 | 06/30/2019 | Partner, Latham & Watkins | Special Government Employee (SGE) Member |
| Davidson, Peter | 09/26/2017 | 09/30/2019 | General Counsel, Department of Commerce | Regular Government Employee (RGE) Member |
| DeMuth, Christopher | 07/20/2017 | 06/30/2019 | Distinguished Fellow, Hudson Institute | Special Government Employee (SGE) Member |
| Dickinson, Elizabeth | 09/01/2011 | 09/30/2019 | Chief Counsel, Food and Drug Administration | Regular Government Employee (RGE) Member |
| Feldblum, Chai | 09/24/2014 | 09/30/2019 | Commissioner, Equal Employment Opportunity Commission | Regular Government Employee (RGE) Member |
| Fuchs, Meredith | 08/22/2016 | 06/30/2020 | Senior VP & Chief Counsel for Regulatory Issues, Capital One Financial Corp. | Special Government Employee (SGE) Member |
| Girouard, Robert | 01/19/2017 | 09/30/2019 | Senior Counsel in the Office of General Counsel, OPM | Regular Government Employee (RGE) Member |
| Heinzerling, Lisa | 07/11/2013 | 06/30/2019 | Professor of Law, Georgetown University Law Center | Special Government Employee (SGE) Member |
| Hickman, Kristin | 07/20/2017 | 06/30/2019 | Distinguished McKnight University Professor and Harlan Albert Rogers Professor of Law, University of Minnesota Law School | Special Government Employee (SGE) Member |
| Hipolit, Richard | 03/11/2016 | 09/30/2019 | Deputy General Counsel for Legal Policy, Department of Veterans Affairs | Regular Government Employee (RGE) Member |
| Hoffman, Janice | 03/19/2013 | 09/30/2019 | Associate General Counsel, Centers for Medicare and Medicaid Services | Regular Government Employee (RGE) Member |
| Keith, Robert | 05/26/2017 | 09/30/2019 | Associate General Counsel, Children, Families and Aging Division, Office of the General Counsel, HHS | Regular Government Employee (RGE) Member |
| Kesselman, Marc | 08/01/2016 | 06/30/2020 | Senior V.P. and General Counsel, Purdue Pharma L.P. | Special Government Employee (SGE) Member |
| Kirkpatrick, Christopher | 12/04/2014 | 09/30/2019 | Secretary, Commodity Futures Trading Commission | Regular Government Employee (RGE) Member |
| Klain, Ronald | 05/20/2015 | 05/20/2019 | Vice President & General Counsel, Revolution LLC | Special Government Employee (SGE) Member |
| Klingler, Richard | 07/26/2016 | 06/30/2020 | Partner, Sidley Austin LLP | Special Government Employee (SGE) Member |

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|---------------------|------------|------------|---|--|
| Koffsky, Paul | 04/28/2017 | 09/30/2019 | Performing the Duties of the DoD General Counsel, Department of Defense | Regular Government Employee (RGE) Member |
| Kottmyer, Alice | 07/11/2013 | 09/30/2019 | Attorney Adviser, Office of the Legal Adviser, Department of State | Regular Government Employee (RGE) Member |
| Kuehn, Clara | 05/11/2015 | 09/30/2019 | Attorney Advisor, U.S. International Trade Commission | Regular Government Employee (RGE) Member |
| Landers, Renee | 07/28/2016 | 06/30/2020 | Professor of Law, Suffolk University Law School | Special Government Employee (SGE) Member |
| Laws, Elliott | 07/20/2017 | 06/30/2019 | Partner, Crowell & Moring | Special Government Employee (SGE) Member |
| Lesnick, Robert | 10/01/2010 | 09/30/2019 | Chief Administrative Law Judge, Federal Mine Safety and Health Review Commission | Regular Government Employee (RGE) Member |
| Lillie, Juliette | 09/08/2016 | 09/30/2019 | Director, Executive Secretariat & Regulatory Affairs, Department of the Interior | Regular Government Employee (RGE) Member |
| Mancini, Nadine | 10/01/2010 | 09/30/2019 | General Counsel, Occupational Safety and Health Review Commission | Regular Government Employee (RGE) Member |
| Mascott, Jennifer | 07/20/2017 | 06/30/2019 | Assistant Professor of Law & Faculty Director of the Supreme Ct. & Admin. Law Clinics, Antonin Scalia Law School, GMU | Special Government Employee (SGE) Member |
| McDonald, Christina | 06/24/2014 | 09/30/2019 | Associate General Counsel for Regulatory Affairs, Department of Homeland Security | Regular Government Employee (RGE) Member |
| McFadden, Elizabeth | 10/01/2010 | 09/30/2019 | Deputy General Counsel for Ethics, Legislative Counsel, and Regulatory Services, Department of Education | Regular Government Employee (RGE) Member |
| McLeod, Mary | 03/11/2016 | 09/30/2019 | General Counsel, Consumer Financial Protection Bureau | Regular Government Employee (RGE) Member |
| Morant, Blake | 08/21/2016 | 06/30/2020 | Dean and Robert Kramer Research Professor of Law, George Washington University School of Law | Special Government Employee (SGE) Member |
| Nielson, Aaron | 07/20/2017 | 06/30/2019 | Associate Professor of Law, Brigham Young University | Special Government Employee (SGE) Member |
| Nou, Jennifer | 07/28/2016 | 06/30/2020 | Neubauer Family Assistant Professor of Law, University of Chicago Law School | Special Government Employee (SGE) Member |
| Nourse, Victoria | 07/20/2017 | 06/30/2019 | Professor of Law, Georgetown University Law Center | Special Government Employee (SGE) Member |
| O'Connell, Anne | 07/22/2014 | 06/30/2020 | Professor of Law, Stanford Law School | Special Government Employee (SGE) Member |
| Olson, Theodore | 07/08/2010 | 07/08/2019 | Partner, Gibson Dunn & Crutcher; formerly Solicitor General | Special Government Employee (SGE) Member |
| Otis, Lee | 07/11/2013 | 06/30/2019 | Senior Vice President and Director, Faculty Division, The Federalist Society for Law & Public Policy Studies | Special Government Employee (SGE) Member |

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|----------------------|------------|------------|---|--|
| Owens, James | 09/08/2017 | 09/30/2019 | Deputy General Counsel, Department of Transportation | Regular Government Employee (RGE) Member |
| Parrillo, Nicholas | 07/27/2016 | 06/30/2020 | Professor of Law, Yale Law School | Special Government Employee (SGE) Member |
| Perry, William | 08/06/2018 | 09/30/2019 | Director, Directorate of Stds and Guidance, OSHA | Regular Government Employee (RGE) Member |
| Pollard, Alfred | 10/30/2014 | 09/30/2019 | General Counsel, Federal Housing Finance Agency | Regular Government Employee (RGE) Member |
| Pollitzer, Patricia | 06/13/2016 | 09/30/2019 | Assistant General Counsel, Regulatory Affairs Division, Consumer Product Safety Commission | Regular Government Employee (RGE) Member |
| Ramirez, Edith | 07/20/2017 | 06/30/2019 | Partner, Hogan Lovells LLP | Special Government Employee (SGE) Member |
| Raso, Connor | 05/30/2017 | 09/30/2019 | Senior Counsel, Securities and Exchange Commission | Regular Government Employee (RGE) Member |
| Ricci, Carrie | 11/17/2014 | 09/30/2019 | General Counsel for Marketing, Regulatory & Food Safety Programs, Department of Agriculture | Regular Government Employee (RGE) Member |
| Robbins, Mark | 01/07/2017 | 09/30/2019 | Vice Chairman & Board Member, U.S. Merit Systems Protection Board | Regular Government Employee (RGE) Member |
| Rothschild, Roxanne | 06/08/2018 | 09/30/2019 | Acting Chief of Staff to the Chairman, NLRB | Regular Government Employee (RGE) Member |
| Salmoiraghi, Jessica | 06/05/2018 | 09/30/2019 | Associate Administrator of the Office of Governmentwide Policy, GSA | Regular Government Employee (RGE) Member |
| Salzmann, Kelly | 07/05/2018 | 09/30/2019 | Acting Executive Director, Office of Appellate Operations, SSA | Regular Government Employee (RGE) Member |
| Schwarz, Jay | 08/20/2018 | 09/30/2019 | Senior Counsel, Legal Division, Federal Reserve Board | Regular Government Employee (RGE) Member |
| Semo, Alina | 08/31/2017 | 09/30/2019 | OGIS Director, National Archives & Records Administration | Regular Government Employee (RGE) Member |
| Shapiro, Sidney | 07/26/2016 | 06/30/2020 | Frank U. Fletcher Chair of Administrative Law, Wake Forest University School of Law | Special Government Employee (SGE) Member |
| Sharkey, Catherine | 07/22/2014 | 06/30/2020 | Crystal Eastman Professor of Law, New York University Law School | Special Government Employee (SGE) Member |
| Shavers, Anna | 03/20/2017 | 06/30/2019 | Cline Williams Professor of Citizenship Law, University of Nebraska College of Law | Special Government Employee (SGE) Member |
| Sherburne, Jane | 07/08/2010 | 10/02/2019 | Owner, Sherburne PLLC | Special Government Employee (SGE) Member |
| Siciliano, Carol Ann | 10/01/2010 | 09/30/2019 | Associate General Counsel, Environmental Protection Agency | Regular Government Employee (RGE) Member |

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|----------------------|------------|------------|---|--|
| Siegel, Jonathan | 11/10/2015 | 06/30/2019 | F. Elwood & Eleanor Davis Research Professor of Law, George Washington University School of Law | Special Government Employee (SGE) Member |
| Simpson, Kevin | 10/01/2010 | 09/30/2019 | Principal Deputy General Counsel, Department of Housing and Urban Development | Regular Government Employee (RGE) Member |
| Tatham, Stephanie | 07/10/2018 | 09/30/2019 | Senior Policy Analyst, Office of Information & Regulatory Affairs, OMB | Regular Government Employee (RGE) Member |
| Todd, Kate | 07/22/2014 | 06/30/2020 | Former Vice President & Chief Counsel for Appellate Litigation, U.S. Chamber Litigation Center, U.S. Chamber of Commerce | Special Government Employee (SGE) Member |
| Trissell, David | 05/15/2018 | 09/30/2019 | General Counsel, Postal Regulatory Commission | Regular Government Employee (RGE) Member |
| Troy, Daniel | 03/10/2017 | 06/30/2019 | Senior Vice President & General Counsel, GlaxoSmithKline | Special Government Employee (SGE) Member |
| Vollmer, Andrew | 07/28/2016 | 06/30/2020 | Professor of Law & Director, John W. Glynn Jr. Law & Business Program, University of Virginia School of Law | Special Government Employee (SGE) Member |
| Walker, Christopher | 07/27/2016 | 06/30/2020 | Associate Professor of Law, Ohio State University Michael E. Moritz College of Law | Special Government Employee (SGE) Member |
| Washington, Geovette | 03/17/2016 | 03/17/2019 | Senior VP & Chief Legal Officer, University of Pittsburgh | Special Government Employee (SGE) Member |
| Watts, Kathryn | 07/20/2017 | 06/30/2019 | Jack R. MacDonald Endowed Chair, University of Washington School of Law | Special Government Employee (SGE) Member |
| Wheeler, Russell | 07/29/2016 | 06/30/2020 | Visiting Fellow, Brookings Institution | Special Government Employee (SGE) Member |
| White, Adam | 07/20/2017 | 06/30/2019 | Executive Director, Center for the Study of the Administrative State, Antonin Scalia Law School, GMU; and Research Fellow, The Hoover Institution | Special Government Employee (SGE) Member |
| Wiener, Matthew | 01/06/2017 | 01/06/2020 | Vice Chair & Executive Director, Administrative Conference of the U.S. | Regular Government Employee (RGE) Member |
| Williams, Beth | 09/27/2017 | 09/30/2019 | Assistant Attorney General, Department of Justice | Regular Government Employee (RGE) Member |
| Wood, Tyler | 11/19/2013 | 09/30/2019 | General Counsel, Federal Maritime Commission | Regular Government Employee (RGE) Member |
| Yi, Charles | 02/10/2017 | 09/30/2019 | General Counsel, Federal Deposit Insurance Corp. | Regular Government Employee (RGE) Member |
| Yoo, Chin | 09/08/2017 | 09/30/2019 | Deputy Associate General Counsel, Federal Communications Commission | Regular Government Employee (RGE) Member |

Number of Committee Members Listed: 85

Narrative Description

The statutory purposes of the Administrative Conference are to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest (5 USC 591). The Act further specifies the objectives of promoting more effective public participation and efficiency in the rulemaking process; reducing unnecessary litigation in the regulatory process; improving the use of science in the regulatory process; and improving the effectiveness of laws applicable to the regulatory process. The Assembly consists of the 101 Conference members meeting in plenary session to discuss and adopt recommendations for improving Federal administrative procedures. Plenary sessions are normally scheduled twice each year, to consider draft recommendations proposed by subcommittees.

What are the most significant program outcomes associated with this committee?

Checked if Applies

- | | |
|---|-------------------------------------|
| Improvements to health or safety | <input type="checkbox"/> |
| Trust in government | <input checked="" type="checkbox"/> |
| Major policy changes | <input type="checkbox"/> |
| Advance in scientific research | <input type="checkbox"/> |
| Effective grant making | <input type="checkbox"/> |
| Improved service delivery | <input checked="" type="checkbox"/> |
| Increased customer satisfaction | <input checked="" type="checkbox"/> |
| Implementation of laws or regulatory requirements | <input checked="" type="checkbox"/> |
| Other | <input checked="" type="checkbox"/> |

Outcome Comments

Administrative Conference recommendations may be addressed to Federal agencies, the Congress, the Judicial Conference of the United States or the President. The recommendations may span a broad variety of administrative procedural issues, and are designed to improve administrative procedures in Federal programs. The objectives are to ensure that private rights may be fully protected and regulatory activities and other federal responsibilities may be carried out expeditiously and in the public interest.

What are the cost savings associated with this committee?

Checked if Applies

- | | |
|---------------------|-------------------------------------|
| None | <input type="checkbox"/> |
| Unable to Determine | <input checked="" type="checkbox"/> |
| Under \$100,000 | <input type="checkbox"/> |

\$100,000 - \$500,000
\$500,001 - \$1,000,000
\$1,000,001 - \$5,000,000
\$5,000,001 - \$10,000,000
Over \$10,000,000
Cost Savings Other

☐
☐
☐
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Cost Savings Comments

N/A

What is the approximate Number of recommendations produced by this committee for the life of the committee?

51

Number of Recommendations Comments

Committee was re-established in FY2010.

What is the approximate Percentage of these recommendations that have been or will be Fully implemented by the agency?

0%

% of Recommendations Fully Implemented Comments

N/A

What is the approximate Percentage of these recommendations that have been or will be Partially implemented by the agency?

69%

% of Recommendations Partially Implemented Comments

Most Administrative Conference recommendations are addressed to a broad group of federal agencies, so that implementation is a gradual process. The actual percentage is likely higher since Federal agencies do not always report their implementation of ACUS recommendations.[A] Recommendation 2011-6, International Regulatory Cooperation, was implemented by Executive Order 13609, Promoting International Regulatory Cooperation (77 Fed. Reg. 26413, May 1, 2012). The executive order also cites the Administrative Conference as a source of information for the Working Group established by Executive Order 12866.[B] In November 2016, the American Bar Association's Section of Administrative Law and Regulatory Practice submitted a report to the President-elect entitled "Improving the Administrative Process," which cited favorably numerous ACUS

recommendations including: Procedures for Negotiating Proposed Regulations (82-4 and 85-5); Presidential Transition Workers' Code of Ethical Conduct (88-1); Presidential Review of Agency Rulemaking (88-9); Agency Policy Statements (92-2); Review of Existing Agency Regulations (95-3); International Regulatory Cooperation (2011-6); Agency Innovations in e-Rulemaking (2011-8); Midnight Rules (2012-2); Benefit-Cost Analysis at Independent Regulatory Agencies (2013-2); Guidance in the Rulemaking Process (2014-3); Retrospective Review of Agency Rules (2014-5); and Promoting Accuracy and Transparency in the Unified Agenda (2015-1); [C] Section 701 of Public Law 114-74, the Bipartisan Budget Act of 2015 (BBA), implements Recommendation 2012-8, Inflation Adjustment Act, regarding periodic adjustments of civil money penalties. Multiple federal agencies have revised their regulations in accord with this Recommendations and subsequent statutory update. The CBO estimated that the BBA, including the provisions on inflation adjustment, would increase government revenue by more than \$1.3 billion over ten years.[D] Specific provisions of Recommendation 2011-5, Incorporation by Reference, have been utilized in a variety of contexts: Revisions to OMB Circular A-119 (81 Fed. Reg. 4673, Jan. 27, 2016); rulemaking by the Pipeline and Hazardous Materials Safety Administration (81 Fed. Reg. 20,722, Apr. 8, 2016); Consumer Financial Protection Bureau (79 Fed. Reg. 51,732, Aug. 29, 2014); and the Office of the Federal Register (79 Fed. Reg. 66,267, Nov. 7, 2014).[E] In February 2013, the American Bar Association's House of Delegates passed resolutions endorsing Conference Recommendation 2011-3, which urges Federal government action to minimize government contractor personal conflicts of interest, and Recommendation 2012-6, which urges Congress to repeal and replace an outdated law that may unfairly bar certain court claims on procedural grounds. Bills to implement 2012-6 have been introduced in both the 113th and 114th Congresses. In the House, the Judiciary Committee favorably reported both bills. [F] In 2014, the Social Security Administration (SSA) adopted a final rule in accord with Recommendation 2011-4 on agency use of video hearings (79 Fed. Reg. 35,926, June 25, 2014). Recommendations in a report to SSA were cited by that agency in formulating its rule, issued in 2015, on submission of evidence in disability claims (80 Fed. Reg. 14,828, Mar. 20, 2015). [G] Recommendation 2014-4, "Ex Parte" Communications in Informal Rulemaking, was cited in rulemaking notices by the U.S. Sentencing Commission (81 Fed. Reg. 18,695, Mar. 31, 2016) and the Postal Regulatory Commission (81 Fed. Reg. 42,534, June 30, 2016).[H] The Consumer Financial Protection Bureau cited the Conference's model rules for implementing the Equal Access to Justice Act in connection with issuance of its final rule in 2014.[I] On March 31, 2016, the United States Sentencing Commission issued a Notice of Proposed Rulemaking that enacted various amendments to the agency's rules of practice and procedure. Among other things, these amendments were designed to bring the agency's practices into line with several ACUS recommendations. In response to the Social Media

recommendation, the agency expanded its use of social media to provide notices of upcoming agency meetings.[J] On March 31, 2016, the United States Sentencing Commission issued a Notice of Proposed Rulemaking that enacted various amendments to the agency's rules of practice and procedure. Among other things, these amendments were designed to bring the agency's practices into line with several ACUS recommendations, including ACUS Recommendation 2014-2, Government in the Sunshine Act. In response to the Sunshine Act recommendation, the agency adopted procedures for providing public notice of the type of business conducted in both public and non-public meetings, circulating relevant documents to the public in advance of public meetings, and memorializing the proceedings of public meetings (via transcript, webcast, or other means).[K] On October 2, 2017, the Surface Transportation Board issued a Notice of Proposed Rulemaking to "modify its regulations to permit, subject to disclosure requirements, ex parte communications in informal rulemaking proceedings" and "clarify and update when and how interested persons may communicate informally with the Board regarding pending proceedings other than rulemakings." In accordance with ACUS Recommendation 2014-4, the proposed rule would rescind the agency's prior position prohibiting ex parte contacts in informal rulemaking and implement a "permit-but-disclose" approach. The proposed rule would permit ex parte communication after the publication of an NPRM up to 20 days before the end of the comment period and require that the substance of such communications be summarized and posted in the rulemaking docket. Both the Postal Regulatory Commission and the U.S. Sentencing Commission took similar actions in adopting the provisions of Recommendation 2014-4 in 2016.[L] On February 23, 2017, the Administrative Office of the United States Courts (AO) notified the Vice Chair via letter that Recommendation 2016-3, Special Procedural Rules for Social Security Litigation in District Court, had been forwarded to the Chair and Reporters of the Advisory Committee on Civil Rules, and had been docketed and posted on the Federal Rules of Practice & Procedure section of the uscours.gov website as Docket No. 17-CV-D. The Recommendation was subsequently addressed at the April 2017 meeting of the AO's Civil Rules Committee. [M] On May 10, 2017, the Coalition of Federal Ombudsmen (COFO) circulated to its members for comment a revised draft of COFO standards for federal ombuds. The new draft fully endorses the content of ACUS Recommendation 2016-5.[N] In July 2017, the Trump administration released its Unified Agenda. For the first time, agencies posted and made public their list of "inactive" rules-providing notice to the public of regulations still being reviewed or considered. This refers to the "pending" rules in Copeland's 2015 report that were hidden from the public. Approximately 500 rules are encompassed within this category. This action was consistent with the best practices outlined in ACUS Recommendation 2015-1, Promoting Accuracy and Transparency in the Unified Agenda. Conference recommendations and their supporting research reports are often cited in House or Senate committee reports on

pending legislation and in Federal judicial opinions. Examples include:[O] Recommendation 2014-5, Retrospective Review of Agency Rules, cited by the Senate Homeland Security and Governmental Affairs Committee, Report on S. 1817, Smarter Regulations Act of 2015 (S. Rep. No. 114-282 (2016)).[P] Recommendation 2015-1, Promoting Accuracy and Transparency in the Unified Agenda, cited by the House Judiciary Committee, Report on H.R. 1759, the ALERT Act (H.R. Rep. No.114-238 (2015)).[Q] Recommendation 2016-2, Aggregation of Similar Claims in Agency Adjudication, cited by Senior U.S. District Judge Weinstein in a nationwide class action case, Kurtz v. Kimberly-Clark Corp. et al., 14-CV-1142 (E.D.N.Y. June 28, 2016). And, In November 2016, the Department of Education announced a new class-wide process for students seeking loan forgiveness from predatory schools. One commenter referred to Recommendation 2016-2, stating that agencies have broad discretion to aggregate claims.[R] In written testimony prepared for the U.S. Senate Committee on Commerce, Science, and Transportation in connection with a February 1, 2017 hearing, Adam J. White (Research Fellow, Hoover Institution) favorably cited ACUS Recommendation 2014-5 and the associated consultant report in emphasizing the strong expert consensus in favor of retrospective review. White noted that “the vaunted Administrative Conference of the United States . . . has reported on the significant benefits that agencies have reaped from reviewing their own past work.” [S] In its 2018 order on "Net Neutrality" the FCC relied on Recommendation 2011-1, Legal Considerations in e-Rulemaking, to evaluate the 23 million comments it received. And, in June 2018, the FCC Chairman issued letters to members of Congress citing the Recommendation in support of the manner in which the agency staff reviewed short-form comments in connection with the Net Neutrality Rulemaking. [T] In July 2018, the DEA published a final rule titled "Controlled Substances Quotas: which relies on Recommendation 2011-2, Rulemaking Comments, by supporting the proposition that agencies should provide an explanation when they set a comment period of fewer than 30 days. [U] The Senate Committee report underlying HR 70, the Federal Advisory Committee Act Amendments of 2017, discusses Recommendation 2011-7 Federal Advisory Committee Act--Issues and Proposed Reforms, and explains that the legislation seeks to address ACUS's recommendations by improving transparency and increasing diversity in committee membership. [V] CRS relied on Recommendation 2012-2, Midnight Rules, in its 2017 report titled Presidential Transitions: Issues Involving Outgoing and Incoming Administrations." Similarly, GAO cited this Recommendation in GAO-18-436T. [W] NIST relied on Recommendation 2012-7, Agency Use of Third-Party Programs to Assess Compliance, in a December 2017 Special Publication 2000-02, Conformity Assessment Considerations for Federal Agencies. [X] The 2018 Senate Report for the Regulatory Accountability Act of 2017 relies on the underlying report for Recommendation 2013-2, Benefit-Cost Analysis at Independent Regulatory Agencies. And, in July 2018, the U.S. House of Reps passed the

Unfunded Mandates Information and Transparency Act of 2017, which (per Recommendation 2013-2) would remove the exemption for independent regulatory agencies that are not currently subject to CBA requirements. Independents would have to conduct CBA for rules with an impact of \$100 million or more per year. [Y] In Nov. 2017, Rep. Ralph Norman introduced the Better Evaluation of Science and Technology Act, which consistent with Recommendation 2013-3, Science in the Administrative Process, would require agencies to make relevant scientific studies available for review; and require agencies to provide some evidentiary basis for the rules they promulgate when making decisions based on the weight of scientific evidence. [Z] In June 2018, USDA published a rule (83 Fed. Reg. 26,867) that is consistent with Recommendation 2014-1, Resolving FOIA Disputes Through Targeted ADR Strategies. The Recommendation called for agencies to notify requesters of OGIS mediation services as an alternative to litigation, among other things. [AA] In October 2017, the Surface Transportation Board issued a rule to modify its regs to permit ex parte communications in informal rulemaking proceedings and clarify when and how interested persons may communicate informally with the Board regarding pending proceedings other than rulemakings. This accords with Recommendation 2014-4, "Ex Parte" Communications in Informal Rulemaking. [BB] In June 2018, the EPA issued an ANPRM (83 Fed Reg 27,524) in which they solicit public comment on whether the agency should require a systematic retrospective review element in new regulations. This regulatory action is consistent with Recommendation 2014-5, Retrospective Review of Agency Rules. [CC] In November 2017, the Civil Rules Committee of the Judicial Conference discussed Recommendation 2016-3, Special Procedural Rules for Social Security Litigation in District Court. The matter has been taken under advisement and further review is pending. If adopted the Recommendation may reduce backlogs of SSA cases in District Court. In addition, in February 2018, the U.S. District Court for the Southern district of Ohio cited the report underlying the Recommendation, as did the U.S. District Court for the District of South Carolina in Feb. 2018. [DD] In 2018, CRS cited the report underlying Recommendation 2016-5, The Use of Ombuds in Federal Agencies. The CRS report is titled "SBA Office of the National Ombudsman: Overview, History and Current Issues." [EE] In Jan. 2018 SSA issued a final rule (83 Fed. Reg. 30,849) revising its standards of conduct and responsibility for appointed representatives. In citing Recommendation 2017-1, Adjudication Materials on Agency Websites, SSA indicated that it will work with ACUS on sub-regulatory guidance on how it will publish Appeals Council decisions that it designates as precedent under its representative conduct provisions. [FF] In January 2018, the Federal Circuit issued an opinion implicating Recommendation 2017-5, Agency Guidance Through Policy Statements, in discussing agency guidance and the extent to which it should be binding. In July 2018, the U.S. District Court for the District of Minnesota cited the report underlying Recommendation 2017-5, And, in September 2018, the U.S. House of

Representatives passed the GOOD Act, which would implement Recommendation 2017-5 by requiring agencies to make their guidance documents available electronically on their websites. The House Committee Report specifically notes that the bill implements part of the Recommendation (H. Rep. 115-972). [GG] In June 2018, DOT announced a pilot program to permit people who are at least 18 years old to drive trucks across state lines--thus implementing Recommendation 2017-6, Learning from Regulatory Experience--a recommendation that encourages regulatory experimentation.

Does the agency provide the committee with feedback regarding actions taken to implement recommendations or advice offered?

Yes ☒ No ☐ Not Applicable ☐

Agency Feedback Comments

The Administrative Conference Act (5 U.S.C. 595) requires the Chairman to make a full report concerning the affairs of the Conference at each plenary session. The Chairman's reports regularly update the Assembly (the advisory committee) on implementation activities.

What other actions has the agency taken as a result of the committee's advice or recommendation?

Checked if Applies

| | |
|-----------------------------------|--------------------------|
| Reorganized Priorities | <input type="checkbox"/> |
| Reallocated resources | <input type="checkbox"/> |
| Issued new regulation | <input type="checkbox"/> |
| Proposed legislation | <input type="checkbox"/> |
| Approved grants or other payments | <input type="checkbox"/> |
| Other | <input type="checkbox"/> |

Action Comments

N/A

Is the Committee engaged in the review of applications for grants?

No

Grant Review Comments

N/A

How is access provided to the information for the Committee's documentation?

Checked if Applies

| | |
|---------------------------|-------------------------------------|
| Contact DFO | <input checked="" type="checkbox"/> |
| Online Agency Web Site | <input checked="" type="checkbox"/> |
| Online Committee Web Site | <input checked="" type="checkbox"/> |
| Online GSA FACA Web Site | <input type="checkbox"/> |
| Publications | <input checked="" type="checkbox"/> |
| Other | <input type="checkbox"/> |

Access Comments

N/A